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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JUNE STOUGH,

Plaintiff and Respondent,

v.

ROBERT KLURE,

Defendant and Appellant.

H033911

(Santa Clara County

Super. Ct. No. CV086862)

Appellant Robert Klure appeals from an order denying his motion for summary judgment. In her brief, respondent June Stough requests that we dismiss the appeal as taken from a nonappealable order.¹ Finding that an order denying a motion for summary judgment, deemed by the trial court to be a motion for judgment on the pleadings, is not appealable, we will dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant filed a motion for summary judgment on November 21, 2008, requesting judgment in his favor on all causes of action stated against him in respondent's complaint. The motion was procedurally defective in that it did not contain a separate statement of undisputed material facts as required by California Code of Civil Procedure section 437c, subdivision (b)(1); nor did it include any supporting evidence. The motion

¹ In her brief, respondent June Stough request sanctions on appeal. That request is hereby denied.

was set to be heard on February 19, 2008. On January 14, appellant filed an amended motion for summary judgment. Again appellant failed to include evidence or a separate statement. Respondent opposed the motion, pointing to all the procedural and substantive deficiencies in the appellant's motion. In a reply filed two days before the hearing, appellant finally included a statement of undisputed material facts and evidence. On February 19, the trial court held a hearing in the matter, and the same day issued an order denying the motion.

In its order the trial court denied the motion because it was not supported with a separate statement or affidavits. The trial court went on to treat the defective motion for summary judgment as a motion for judgment on the pleadings. As such, the trial court denied the motion as well. This timely appeal ensued.

DISCUSSION

The right to appeal is wholly statutory. (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 108.) Code of Civil Procedure section 904.1 enumerates the orders and judgments of the superior court from which an appeal may be taken. "An order denying summary judgment is not one of these. Section 437c, subdivision (l) specifies that the judgment resulting from the *granting* of a motion for summary judgment is appealable, as is any other judgment. However, the same subdivision provides that the denial of such a motion may only be reviewed by way of a petition for extraordinary writ." (*Sierra Craft, Inc. v. Magnum Enterprises, Inc.* (1998) 64 Cal.App.4th 1252, 1256.) Therefore, an order denying summary judgment is not separately appealable because it is an interlocutory order which may only be reviewed by way of writ or on direct appeal from a final judgment entered after a trial. (*Coy v. County of Los Angeles* (1991) 235 Cal.App.3d 1077, 1082, fn. 2.) Appellant has not filed a petition for extraordinary writ, nor has he filed an appeal from the final judgment. He appeals from the order denying the motion for summary judgment. Since that order is not an appealable order, the appeal must be dismissed.

Even though the trial court treated the motion for summary judgment as a motion for judgment on the pleadings, this does not save his appeal. An order denying a motion for judgment on the pleadings is not an appealable order either. (*Stevens v. Key Resistor Corp.* (1960) 186 Cal.App.2d 325, 326.)²

DISPOSITION

The appeal is dismissed as taken from a nonappealable order.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.

² Because we hold that the appeal has been taken from a nonappealable order, we need not address the substantive issues raised in the appeal regarding the propriety of the order denying the motion for summary judgment.